

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

KENNETH TAGGART,

Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, et al,

Defendants.

Case No. 2:20-cv-05503-GJP

Philadelphia, Pennsylvania
May 26, 2021

10:04 a.m.

TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE GERALD J. PAPPERT
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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For the Defendants:

(Deutsche Bank National
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Mortgage Electronic
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1 (Call to order at 10:04 a.m.)

2 THE COURT: So following oral argument on the
3 Defendant's motions to dismiss, specifically on April 28, I
4 issued an Order to Show Cause directed to Plaintiff's counsel
5 Joshua Thomas.

6 And the order asked him to show cause why the Court
7 should not impose sanctions under Rule 11 in the Court's
8 inherent authority for nine specific issues as outlined in my
9 order of April 28.

10 On May 7, I believe it was, Mr. Thomas filed his
11 response to the Order to Show Cause, which obviously we have
12 now reviewed and are ready to discuss.

13 So, Mr. Thomas, if you would please come forward. I
14 do have some specific questions. And before we begin,
15 obviously, Mr. Lucini can swear in Mr. Thomas.

16 THE CLERK: Please raise your right hand.

17 JOSHUA THOMAS

18 having been duly sworn testified as follows:

19 THE COURT: So, Mr. Thomas, let's start. The first
20 issue was your failure to address the potential preclusive
21 effect of the Court's decision in Taggart v. Morgan Stanley,
22 16-62 from 2016.

23 And with respect to your quiet title claim, you
24 correctly point out in your response that your quiet title
25 claim in that case was dismissed without prejudice.

1 But when my colleague, Judge Smith, dismissed that
2 claim against MERS, which is Count 2 of your complaint in this
3 case, he said and I quote, "MERS and MERS Corp. do not have any
4 claims of any interest in the property at all. And thus, a
5 quiet title action against them is inappropriate.

6 MERS interest in the property ended when it assigned
7 that interest to Deutsche Bank and MERS has never claimed an
8 interest subsequent to that assignment."

9 In your Amended Complaint in that case, in paragraph
10 84, you allege that MERS' assignment to Deutsche Bank was void.

11 Then in your quiet title count against MERS in that
12 same Amended Complaint, you say MERS lacked authority to assign
13 the mortgage on behalf of Decision 1 Mortgage to Deutsche Bank.

14 How is that any different from what you are claiming
15 now? In other words, what do you allege in your Amended
16 Complaint in this case that adds anything to your quiet title
17 claim that Judge Smith opined on in 2016?

18 MR. THOMAS: Specifically, and thank you for the
19 opportunity to respond to your questions more fully, Your
20 Honor.

21 In regards to MERS specifically, we do break down in
22 the complaint, and I have it if you'd like specific references.
23 It was not in the response and that question was not
24 specifically asked in the response.

25 But in this specific complaint, we do still include

1 that MERS' assignment of mortgage as we do still plead that it
2 is void. We do still feel they did not have the authority to
3 file that properly on behalf of Decision 1 or anyone.

4 And since they were the entity that actually was
5 responsible for that assignment of mortgage being recorded on
6 the record, and since we are still of the position that it is
7 void documents still on the record, that is why we felt that it
8 was important to still include them in this case.

9 THE COURT: Did you believe that that has any more
10 merit than it did the last time around?

11 MR. THOMAS: The specific assignment of mortgage in
12 question has not been withdrawn. So we still feel that quiet
13 title is needed in regards to that specific assignment of
14 mortgage.

15 THE COURT: Well, you do talk a lot in this case
16 about deposition testimony from Mr. Robb (phonetic) and Mr.
17 Amaya (phonetic) and whether MERS had authority to assign the
18 mortgage to Deutsche Bank.

19 Notwithstanding whether MERS had that authority,
20 where do you allege here that MERS has claimed an interest in
21 the property subsequent to that assignment?

22 MR. THOMAS: It's that specific assignment that gives
23 nature to the MERS' interest in this case. Again, because they
24 recorded that assignment and it has not been taken off the
25 record, it is still slandering the title of my client.

1 Hence, why we filed the quiet title to get rid of the
2 assignment of mortgage that we still feel is void.

3 Your Honor's absolutely correct. MERS specifically
4 was discussed and those facts were incorporated into this
5 complaint with those depositions.

6 And in those depositions, at no point was there any
7 fact where they said that that assignment would be withdrawn
8 because it was void.

9 Nor was there anything showing that MERS had any
10 further authority since that time. Hence, why it was included
11 in this complaint as well.

12 THE COURT: Well, the issue is that Judge Smith very
13 specifically rejected this claim against MERS in 2016. And
14 now, five years later, or less than that, in this case, you
15 raise the same claim again.

16 And I think the crux of the issue is what has
17 happened since 2016 that supports your allegation that MERS
18 claims an interest in the property now?

19 MR. THOMAS: Well, two things. And Your Honor
20 already pointed one of them. One, as you stated, that the
21 discussion of MERS was in the depositions, and I won't re-hash
22 them, but that was discussed, so there were further facts
23 brought out during those, as well as the fact that the
24 assignment of mortgage that we stated was void, has still not
25 been removed from the record.

1 MERS was responsible for that assignment being
2 recorded. Hence, why they're still part of the case.

3 THE COURT: Even though, Judge Smith under roughly --
4 well the same facts, says that MERS simply does not have any
5 claim of interest in the property at all and a quiet title
6 action against them is inappropriate?

7 MR. THOMAS: Judge Smith's ruling was -- and
8 respectfully to Judge Smith, I fully understand where that
9 ruling's coming from was prior to the depositions
10 being -- going forward, the information that came out regarding
11 MERS during those depositions.

12 And still, notwithstanding the judge's ruling,
13 there's still that void assignment of mortgage. MERS was still
14 responsible for that assignment of mortgage being on the
15 record. Hence, why we still kept it as part of the case.

16 THE COURT: And that's all based on so the
17 distinguishing factors as I understand it from you is the
18 deposition testimony from Mr. Robb and Mr. Amaya?

19 MR. THOMAS: That's the primary factors as to why
20 MERS was still included, yes.

21 THE COURT: And summarize again for me how, A, what
22 they said and why that changes anything?

23 MR. THOMAS: Because there's a discussion as to why
24 or how MERS had the authority to create and record this
25 assignment of mortgage.

1 There was nothing given in that testimony, and they
2 were the parties who would essentially allegedly have the
3 knowledge regarding that issue, they were essentially stating
4 that MERS was never given the authority in their business
5 records. There's no proof of it.

6 And it was unclear from those depositions why that
7 assignment was recorded by MERS in the first place. And there
8 was no authority in their business records from anyone from
9 Decision 1 giving MERS that authority.

10 THE COURT: Okay, the second issue I wanted to
11 address with you is your failure to plead facts supporting
12 Counts 1 through 5 in your Amended Complaint in this case in
13 light of repeated explanations from our Court and the 3rd
14 Circuit Court of Appeals regarding the requirements for
15 pleading quiet title claims.

16 And you respond as if the show cause order says that
17 these prior cases have preclusive effect. And that's not
18 really the issue.

19 The question is in light of the instruction you
20 received from those courts in those other cases regarding the
21 necessary factual allegations required to support a quiet title
22 claim, why isn't your failure to plead those facts supporting
23 your claims here sanctionable?

24 MR. THOMAS: Thank you, Your Honor, again to respond
25 to the question. In regards to those specific facts, we would

1 allege that in addition to the facts that were in the
2 complaint, while they were numerous and sometimes may not have
3 been as artful as required, they did actually cover and show
4 specifically why a quiet title action was required.

5 I'll also point out that we actually -- that I did
6 state in my response specifically why the quiet title action
7 was required.

8 I go into some detail regarding the specific tolling
9 and servicing agreement relevant to this case and specifically
10 show exactly why the quiet title action for those specific five
11 clauses should not only be permitted to proceed against these
12 parties, but that there was substantial facts currently in the
13 complaint to actually warrant that.

14 THE COURT: So where in your Amended Complaint do you
15 allege that anyone other than Deutsche Bank is claiming an
16 interest in Mr. Taggart's property?

17 I mean, I know you think the assignment of the
18 mortgage was invalid and void. I know you think Deutsche Bank
19 violated the Pooling and Service Agreement.

20 MR. THOMAS: Uh-huh.

21 THE COURT: But where do you claim, for example, that
22 Stern & Eisenberg is claiming an interest in Mr. Taggart's
23 property?

24 MR. THOMAS: Let me try and answer that question as
25 directly as I can, Your Honor. I'm not saying that Stern &

1 Eisenberg has an interest. I'm frankly not saying MERS has an
2 interest.

3 What I'm saying is quiet title is needed to remove
4 assignments of mortgage that should be considered void on its
5 face.

6 Quiet title is not inherently a damages or inherently
7 a claim, where we're trying to seek in and of itself damages
8 from the parties.

9 We're saying these parties were responsible for
10 something being put on the chain of title that should not be
11 there.

12 And at its heart, that's exactly what all of these
13 parties essentially did. It's not saying they have interest
14 directly.

15 It's saying that we want these void documents removed
16 from the chain of title. That's why those assignments and
17 that's why the parties are included, Your Honor.

18 THE COURT: Uh-huh. So you assert a quiet title
19 claim against SLS in Count 3, right?

20 MR. THOMAS: Yes, Your Honor.

21 THE COURT: Okay, but paragraph 90 of your Amended
22 Complaint alleges that SLS has "not even made claims to be the
23 owner of the mortgage and the note or a party entitled to
24 enforce the note".

25 If that's true, how can you maintain a quiet title

1 action against SLS?

2 MR. THOMAS: That's a good question. The way that
3 that actually occurred and why SLS is included is because
4 they're acting as the servicer for those parties. They're
5 continuing to act in the interest of those parties based off of
6 the void assignments of mortgage.

7 So we're stating that the actions taken by SLS
8 against the property of Mr. Taggart, it specifically warrants a
9 quiet title action because of the documents they're relying on.

10 THE COURT: But you say straight out SLS has not made
11 claims to own the mortgage or the note or to be a party
12 entitled to enforce it?

13 MR. THOMAS: That's exactly correct. That's why
14 we're saying that --

15 THE COURT: You don't see anything inherently
16 contradictory in that statement versus the claim you
17 move -- you've made?

18 MR. THOMAS: The only contradictory item would be if
19 quiet title was only for parties making a claim to the
20 property. That's not the case. That's not what we're
21 pleading.

22 What we're pleading specifically is these parties are
23 responsible for documents being recorded in the chain of the
24 title that should be either considered void or are invalid.

25 SLS is also, at least in part, responsible for those

1 documents not only being recorded, but being pursued further.

2 THE COURT: Your reliance on the District of New
3 Hampshire's decision in Drouin v. American Home Mortgage
4 Servicing puzzled me and I think increases, you know, my
5 skepticism of your position. I mean, that case has nothing to
6 do with pleading facts in support of a Pennsylvania law quiet
7 title claim.

8 As you should know, the case addresses nonjudicial
9 foreclosure in New Hampshire, which is obviously very different
10 from anything going on here.

11 The case addresses the issue of whether plaintiffs
12 had standing to challenge a putative assignment of their
13 mortgage, which again, is not related to any issue here. There
14 is nothing in that decision that supports your position and I
15 wonder why you rely on it?

16 MR. THOMAS: Absolutely, and I'll explain. We're not
17 using it as anything more than to show that an assignment
18 of -- that the attacks that were taken regarding the PSA and
19 the assignment of mortgage are not merely voidable, but void.

20 That was the only takeaway from that case. We're not
21 relying on it for anything regarding the Pennsylvania law.
22 It's merely --

23 THE COURT: Is that really how you think you've
24 worded that and explained that?

25 MR. THOMAS: I have included the case specifically in

1 regards to the PSA and explained that the assignments
2 themselves are void, not voidable.

3 And the reason I incorporated in the Drouin argument
4 on page 12 was specifically to say not because we're trying to
5 rely on them to -- for quiet title support, but specifically in
6 regards to the transfer of those -- the essentially the
7 assignments themselves being void and not merely voidable.

8 That was specifically referenced right before the
9 case cite. That's exactly the details we're looking for as in
10 regards to that.

11 And it even says, after the case citation, that the
12 homeowners cannot challenge the assignment. And then, that
13 case actually says actually they can, here's why in regards to
14 it being void.

15 That's what it was referred to. That was the only
16 reason. There was no purpose beyond that just to show that an
17 assignment of mortgage can be considered void and should be.

18 Actually state the second to -- actually, the last
19 line that this case should be instructive why U.S. Bank v.
20 Gerber can be relied on. So I actually do distinguish that at
21 the end of that paragraph, Your Honor.

22 THE COURT: Let's look at issue 3, which was your
23 failure to plead facts supporting Counts 6 through 10.

24 Again, after repeated guidance from the District
25 Court and the Court of Appeals regarding the requirements for

1 pleading slander of title claims, you say, and I of course am
2 referring there to Taggart v. Morgan Stanley, Taggart v. Wells
3 Fargo, you say you plead claims for slander of title based on
4 pleadings and evidence from the defendants in state court.

5 But your claims are really very similar to those in
6 case number 16-62 and 16-63, which was the Taggart, Morgan
7 Stanley and Taggart, Wells Fargo cases.

8 In the Morgan Stanley case, Judge Smith summarily
9 dismissed your slander of title claims for failure to plead
10 facts supporting those claims.

11 And in the Wells Fargo case, Judge Stengel did the
12 exact same thing. What is the difference this time around?

13 MR. THOMAS: As stated with the previous claims, much
14 of the facts that came out of those depositions further support
15 slander of title.

16 I know I referenced earlier slander of title. So,
17 essentially, it's the same thing I said previously in regards
18 to the fact that much of the facts that are different from
19 those cases are from those depositions, that the documents that
20 were recorded that we considered void slandered the title. And
21 as such, that's why those claims were submitted.

22 THE COURT: These underlying depositions that you're
23 relying on as a distinction now, they were again part of the
24 record in the state court foreclosure proceeding, correct?

25 MR. THOMAS: Correct, Your Honor.

1 THE COURT: And they were part of what the state
2 court judge decided before entering summary judgment in your
3 opponent's favor, correct?

4 MR. THOMAS: I honestly don't know what he decided or
5 what he reviewed because he didn't --

6 THE COURT: Well --

7 MR. THOMAS: -- state clearly in his opinion what he
8 stated. I will say that we actually raised --

9 THE COURT: He -- they were part of the record there.
10 And obviously, the courts are -- will consider the record
11 before them.

12 So unless you have any affirmative evidence that
13 would accuse the state court judge of selectively ignoring
14 parts of record, the question is that was all before the state
15 court judge and was part of his decision to enter summary
16 judgment against your client, right?

17 MR. THOMAS: Well, I'm only aware of one case where a
18 judge actually admitted that he would not actually -- well, the
19 judge would not review documents. I don't have that
20 affirmative evidence here.

21 THE COURT: Of course, you don't.

22 MR. THOMAS: What I'm saying is I don't have what the
23 judge relied on or didn't rely on --

24 THE COURT: But it was part of the record?

25 MR. THOMAS: It was part of the record.

1 THE COURT: In the state court foreclosure action,
2 which you lost?

3 MR. THOMAS: I'll also point out, Your Honor, that
4 back in --

5 THE COURT: There's a question there.

6 MR. THOMAS: The answer is yes.

7 THE COURT: Thank you.

8 MR. THOMAS: And if I may elaborate on the answer,
9 Your Honor?

10 THE COURT: Uh-huh.

11 MR. THOMAS: In that case in 2019, we had actually
12 submitted counterclaims. Those counterclaims were actually
13 preliminary objected to by the attorneys --

14 THE COURT: Okay.

15 MR. THOMAS: -- in that case.

16 Those claims were withdrawn because essentially they
17 were stated that they were improper to bring in a foreclosure
18 action. We brought them in the separate action, originally in
19 state court, and they were moved to here.

20 But essentially, what Your Honor is asking was these
21 specific claims were not ruled on because they're objected to
22 and because they were not part of a decision.

23 THE COURT: Well, they were ruled on. They were
24 objected to and a court ruled on those objections and the court
25 handled it accordingly.

1 MR. THOMAS: Actually --

2 THE COURT: But --

3 MR. THOMAS: They did not, Your Honor.

4 THE COURT: -- the issue is this was all part of the
5 underlying state court record. which resulted in the entry of
6 summary judgment against you. So --

7 MR. THOMAS: If I may, Your Honor?

8 THE COURT: -- we're back to -- yeah, you may when
9 I'm finished. We're back to using this alleged purported
10 deposition testimony now is simply a collateral attack on the
11 decision of the state court. It can't be anything other than
12 that.

13 MR. THOMAS: If I may?

14 THE COURT: Don't you see that?

15 MR. THOMAS: If I may respond in full, Your Honor, to
16 that question?

17 THE COURT: You don't have to ask permission to
18 respond. You can respond.

19 MR. THOMAS: The quiet -- the claims that were
20 actually submitted that were objected to were not ruled on. We
21 specifically withdrew them and then filed them as a separate
22 action. They were not denied. There was no order submitted on
23 those POs.

24 THE COURT: But --

25 MR. THOMAS: In regards to your specific question,

1 however, again, that case was only about a foreclosure action.

2 As I stated previously and I believe stated in the
3 pleadings as well, the fact that these claims arose out of that
4 action are a separate action. The --

5 THE COURT: No, that's -- no, no, no, no. That's
6 simply wrong as a matter of law. You deposed these people.
7 They said things that you didn't like. They said things that
8 you think supported your case. They were part of the record in
9 the state court action. And the state court judge ruled
10 against you.

11 The question's really very simple. By resting and
12 basing your claims at least in part on the deposition testimony
13 of those people, whose deposition testimony was part of the
14 record in the state court, you are obviously collaterally
15 attacking the judgment of the state court. There's
16 procedurally no other way for you to define that.

17 MR. THOMAS: There's --

18 THE COURT: Do you understand that?

19 MR. THOMAS: There's a way, Your Honor. And that's
20 why --

21 THE COURT: So the answer is, no, you don't
22 understand that?

23 MR. THOMAS: I understand what you're saying, Your
24 Honor.

25 THE COURT: I know -- I don't -- I'm not asking you

1 to understand what I'm saying. I'm asking you to understand
2 the underlying principle I'm articulating to you.

3 MR. THOMAS: And the principle is a quiet title
4 action is separate from a foreclosure action. It is.

5 THE COURT: Okay.

6 MR. THOMAS: I mean, that's why I included the case
7 law showing there were separate claims and why that they were
8 not -- nothing is seeking to try and overturn the order that
9 was submitted years after this case was filed.

10 What we're specifically doing is pursuing other
11 claims in regards to the matters stated. We're not looking, in
12 fact, we already have an appeal filed for that exact purpose
13 and that's currently in the Superior Court.

14 THE COURT: Right, and we -- but we've talked about
15 that. That doesn't mean that it's not a final judgment for my
16 purposes here.

17 MR. THOMAS: It's for --

18 THE COURT: Where do you allege malice?

19 MR. THOMAS: I'm sorry?

20 THE COURT: Where do you allege malice from any of
21 the Defendants in this case with respect to the slander of
22 title claims?

23 MR. THOMAS: Frankly, I don't think that we
24 specifically showed malice in and of itself the way it's
25 normally defined.

1 I think we're specifically showing title of slander
2 by the recording of those documents that haven't since been
3 withdrawn.

4 THE COURT: Okay, topic four was your failure to
5 address the statute of limitations --

6 MR. THOMAS: Uh-huh.

7 THE COURT: -- and equitable tolling with respect to
8 Counts 11, 16, and 17. So let's start with Count 11, which is,
9 as you know, your breach of contract claim against the Deutsche
10 Bank.

11 And in page -- you discuss the statute of limitations
12 for breach of contract, which is really just a restatement of
13 paragraph 28 of your Amended Complaint.

14 And your argument is essentially that if the statute
15 of limitations bars your breach of contract claim, then it also
16 bars the foreclosure action, right?

17 MR. THOMAS: In part, not --

18 THE COURT: But that isn't a legal argument.

19 MR. THOMAS: In part --

20 THE COURT: That doesn't explain your breach of
21 contract claim here to the extent it's based on conduct that
22 occurred before October 2016 and why it isn't barred by the
23 four-year statute of limitations. Go ahead.

24 MR. THOMAS: Your Honor, we actually go into some
25 detail regarding tolling in this case. So we go into

1 equitable --

2 THE COURT: Let's -- we'll get into tolling later.
3 Answer that first part.

4 MR. THOMAS: That's what I'm trying to answer, Your
5 Honor. If you may or if I can ask, Your Honor, please ask the
6 question so I can answer it directly then if that's not going
7 to be the answer.

8 Why do you -- how would I ask it so you can answer
9 it? Why do you rely on the principle that if the statute of
10 limitations bars your breach of contract claim, then it also
11 bars the foreclosure action, which again as we speak, is a
12 final judgment against you? How does -- that makes no sense.
13 Please explain that to me?

14 MR. THOMAS: I understand, Your Honor. Essentially,
15 what we're saying is because in part the breach, again, that's
16 why I went into equitable tolling as well as the ongoing
17 controversy, but the breach at least in part was regards to the
18 claims in the foreclosure action, even though there was ongoing
19 breaches as was discussed throughout. And there was actually
20 ongoing breaches in addition to those that you're specifically
21 referencing to.

22 That's why we say the equitable tolling would apply.
23 That's why we're saying that once the fraud was discovered, we
24 immediately pursued this action.

25 That's why we're saying then in regards to statute of

1 limitations, they were either told or would not have actually
2 commenced until that fraud was discovered.

3 THE COURT: You're kind of like -- it's kind of like
4 a law student, who doesn't understand the question, but has a
5 lot of good sounding stuff memorized, equitable tolling, fraud,
6 discovery rule.

7 None of this applies here. And you have a four-year
8 statute of limitations for a breach of contract claim.

9 Now let me start with one observation. By arguing
10 that if the statute of limitations bars your breach of contract
11 claim, then it also bars the foreclosure action, that is just a
12 direct collateral attack on the foreclosure action. You're
13 still fighting that battle here.

14 Now you can fight that battle in the Superior Court.
15 You know, if your track record's an indicia, you're going to
16 lose it, but you can't fight that battle here, okay?

17 MR. THOMAS: Your Honor --

18 THE COURT: That's nothing more than an attack on the
19 judgment. But let's get to --

20 MR. THOMAS: May I respond to that, Your Honor?

21 THE COURT: No. Let's get to your reliance on 41
22 P.A. §5529, which says there's a 20-year statute of limitations
23 for execution of a judgment against personal property.

24 That has absolutely nothing to do with your breach of
25 contract claim, which is subject under Pennsylvania law to a

1 four-year statute of limitations.

2 Why would you reference a 20-year statute of
3 limitations for execution of a judgment against personal
4 property? That's not a -- that's completely unrelated to a
5 breach of contract claim. Why would you rely on that?

6 MR. THOMAS: At this point, Your Honor, I can't tell
7 you why we relied on that specific statute. That's why I went
8 into much more detail regarding the statute of limitations
9 being tolled and --

10 THE COURT: Well, whoa, whoa, whoa, hold on, hold on,
11 hold on. I issue an Order to Show Cause --

12 MR. THOMAS: Yes.

13 THE COURT: -- giving you a chance to prove to me why
14 I shouldn't sanction you. And you offer me back an argument in
15 support of your position that your four -- that your breach of
16 contract claim is not barred by the statute of limitations.

17 And your argument relies in part on a statute
18 involving a 20-year statute of limitations for something that
19 is complete irrelevant, completely irrelevant to anything in
20 this case.

21 And when I ask you why you would make that argument
22 to the Court, you say you just can't think of why. Did I miss
23 anything there?

24 MR. THOMAS: What I specifically said, Your Honor, in
25 the paragraph you're referencing, is that the statute of

1 limitations and equitable tolling were addressed in Plaintiff's
2 Opposition to Dismiss at 25. However, more detail will be
3 given --

4 THE COURT: I can read.

5 MR. THOMAS: I understand, but I'm --

6 THE COURT: If I could read -- if I had, you know, if
7 I couldn't read, we would have had this argument, but I mean, I
8 can read.

9 MR. THOMAS: And I'd like to couch the answer in this
10 --

11 THE COURT: The statute of -- and Defendant's
12 Deutsche Bank -- have alleged mortgage and notes are under seal
13 and the statute of limitations is 20 years pursuant to 42 P.A.
14 5529. As such, that applicable statute has not passed yet.

15 You're saying your breach of contract claim is not
16 outside the statute of limitations because it's governed by a
17 20-year statute, which has not passed yet. That's --

18 MR. THOMAS: They're --

19 THE COURT: -- that's ridiculous. That's not true.
20 That's not even remotely true. Why would you make that
21 argument to me?

22 MR. THOMAS: If I may go into some detail, I can
23 explain why, Your Honor.

24 THE COURT: Just answer the question more directly,
25 please.

1 MR. THOMAS: More directly, Your Honor, is because
2 that specific argument there attempting to try and pursue
3 property from my client in the foreclosure action.

4 THE COURT: Oh, stop right there. In the foreclosure
5 action, again, that's an attack on the judgment in the
6 foreclosure action.

7 MR. THOMAS: Which --

8 THE COURT: Whatever they did or didn't do or
9 whatever you're going to argue in the Superior Court with
10 respect to the foreclosure action is not at all relevant to
11 this.

12 You asserted a breach of contract claim, which is
13 independent from anything that happened in the foreclosure
14 action.

15 And if you contest that, then you are admitting that
16 this is all just a big collateral attack on the state court
17 foreclosure action.

18 MR. THOMAS: If I may finish the sentence, Your
19 Honor?

20 THE COURT: You got to start making a little more
21 sense.

22 MR. THOMAS: I'm making sense --

23 THE COURT: I'm -- you know, I'm trying to give you
24 an opportunity here, but you know, every answer that you
25 preface with while in the state court foreclosure action does

1 nothing but tack another nail --

2 MR. THOMAS: And that's why I was looking at trying
3 to finish --

4 THE COURT: -- into that argument.

5 MR. THOMAS: -- finish that sentence so I can make
6 clear, that's not what I'm doing at all, Your Honor. I'm
7 starting there by saying they're relying on a document. In the
8 state foreclosure action, they're relying on a document, the
9 mortgage.

10 Our breach of contract claims are outside of what
11 they are trying to rely on. That's why it's a separate action,
12 Your Honor.

13 That's why we're saying that it's a separate action,
14 and frankly, that's why we started to go into and that's why
15 this is part of the answer to the question you're asking why we
16 went into the tolling. And that when we discovered the fraud
17 during --

18 THE COURT: What --

19 MR. THOMAS: -- the depositions --

20 THE COURT: -- what does that have to do with your
21 breach of contract claim? You -- now you're saying that
22 there's fraud in the depositions in the state court foreclosure
23 action.

24 We've dealt with that already here and/or oral
25 argument. That was part of the record that the state court

1 judge considered, okay?

2 By now coming in and basing a claim on alleged fraud
3 in the state court foreclosure action, you are doing nothing
4 other than collaterally attacking the state court foreclosure
5 action. And why can't you see that?

6 MR. THOMAS: Because --

7 THE COURT: Why don't you understand that? What do I
8 need to do to get you to understand?

9 MR. THOMAS: Your Honor, with all due respect, I
10 understand what you're saying, but --

11 THE COURT: No, but respectfully then, your answers
12 are contempt of Court --

13 MR. THOMAS: They're not, Your Honor.

14 THE COURT: -- because if you understood what I am
15 saying, you wouldn't be answering the way you are and you
16 certainly wouldn't have filed something like this with me.

17 MR. THOMAS: Your Honor, what I filed was
18 specifically showing that these claims are separate from the
19 foreclosure action. The judge ruled on the foreclosure action.
20 He did not rule on the --

21 THE COURT: But you're alleging fraud. And when I
22 ask you what fraud are you alleging, you're talking about
23 alleged fraud that you revealed in depositions in the state
24 court foreclosure action, which you lost a long time ago.

25 MR. THOMAS: It wasn't a long time ago, Your Honor.

1 THE COURT: It was to me.

2 MR. THOMAS: I'm sure. But again, Your Honor,
3 respectfully, if I -- if they stated that they robbed a bank
4 during that deposition, that would be a separate action.

5 If they stated that they hit someone with a car, that
6 wouldn't be part of the foreclosure action. That would be a
7 separate claim. I highly doubt there would be an issue in any
8 court that it was a separate claim.

9 That's exactly what we're saying here that the
10 separate claims that we brought are not -- nor were they ever
11 part of the foreclosure action summary judgment.

12 They were not precluded by that summary judgment
13 action. These claims, and this is why I'm trying to be as
14 clear as possible, Your Honor, because these claims are
15 separate from that judgment.

16 This case was filed almost two years before that
17 judgment was entered --

18 THE COURT: These claims --

19 MR. THOMAS: -- actually a long time ago.

20 THE COURT: -- excuse me, these claims are based on
21 what happened in the state court case, because you're asserting
22 an equitable tolling argument, based on fraud, which prevented
23 you from filing suit.

24 The alleged fraud --

25 MR. THOMAS: Uh-huh.

1 THE COURT: -- is in the state court foreclosure
2 action. At least five times, okay, in paragraph 280 of your
3 complaint, and God knows elsewhere, you reference conduct that
4 you believe demonstrates a breach of contract that occurred in
5 2010.

6 How is all of that not barred by the statute of
7 limitations? And then, don't rely on any ongoing violations.
8 You say Deutsche Bank failed to provide you with proper
9 notices. How is anything that happened in 2010 not barred in
10 this case when you have a four-year statute of limitations?

11 MR. THOMAS: Because that specific fact is not what
12 the breach of contract is only relying on. It's relying on,
13 and I know you said not to rely on it, but it's relying on
14 subsequent items that occurred after that 2010 --

15 THE COURT: In the state court foreclosure case?

16 MR. THOMAS: No, the 2010 document you're referring
17 to again --

18 THE COURT: In the state court foreclosure case? You
19 keep referring to fraud in the state court foreclosure case.

20 MR. THOMAS: The state court foreclosure case focuses
21 on my client defaulting. It doesn't focus on anything else.
22 At the end of the day, that was the only thing that case was
23 about.

24 THE COURT: But the fraud that you're relying on
25 allegedly arose by deposition testimony that you think shows

1 fraud that was part of the record the state court judge before
2 he -- had before he ruled against you.

3 And you either have a claim that is clearly barred,
4 clearly barred by the four-year statute of limitations or you
5 have to acknowledge that you're collaterally attacking the
6 state court foreclosure case. Which is it?

7 MR. THOMAS: With all due respect, I think it's a
8 false comparison, Your Honor. It's neither.

9 THE COURT: It's neither, okay.

10 MR. THOMAS: It's not --

11 THE COURT: Okay. So let's talk about your
12 references to case law in anti-trust and civil rights law,
13 which I don't see how they apply.

14 And your point that you could not have discovered the
15 violations until you began researching defenses for the
16 foreclosure action as part of your application of the discovery
17 rule, okay. So break that down for me?

18 MR. THOMAS: Where specific --

19 THE COURT: What are the violations? What are the
20 violations? You could not have discovered the violations.
21 What are the violations?

22 MR. THOMAS: As I specifically stated and as Your
23 Honor actually stated, there are numerous violations that were
24 actually brought up at the depositions. Those --

25 THE COURT: In the state court foreclosure case?

1 MR. THOMAS: There are numerous violations brought
2 up --

3 THE COURT: May I -- can you please confirm that for
4 me? When you refer to depositions, we need the record to be
5 clear. You're going to see it again.

6 The depositions that you are referring to are to the
7 two gentlemen you mentioned earlier. That was part of
8 discovery in the state court case in Bucks County; is that
9 correct?

10 MR. THOMAS: The new claims that arose --

11 THE COURT: Is that -- that's a simple --

12 MR. THOMAS: Out of the deposition --

13 THE COURT: -- is that correct?

14 MR. THOMAS: The way it's being phrased, Your Honor,
15 it's --

16 THE COURT: Where were they deposed, as part of what
17 case?

18 MR. THOMAS: They were deposed and the new claims
19 arose in the state court action.

20 THE COURT: What -- were they deposed as part of
21 discovery in the state court foreclosure case?

22 MR. THOMAS: That is how the new claims were learned,
23 yes.

24 THE COURT: It's a yes or no. Were the people that
25 you are saying gave fraudulent testimony or revealed fraud to

1 you, was that testimony given as part of depositions during the
2 discovery process in the state court foreclosure case, yes or
3 no?

4 MR. THOMAS: In part yes. Yes.

5 THE COURT: Thank you.

6 So 16 and 17, Counts 16 and 17, the FDCPA claims
7 against Deutsche Bank and SLS, you say that the violations were
8 ongoing based on SLS' harassing phone calls, but Count 16 does
9 not reference any such calls and refers only to Deutsche Bank's
10 failure to verify a debt from June of 2018.

11 You filed this lawsuit in October of 2020. How on
12 the face of that pleading wouldn't the statute of limitations
13 bar that claim?

14 MR. THOMAS: In addition to the specific --

15 THE COURT: What's -- do you know what the state of
16 limitations is for an FDCPA claim?

17 MR. THOMAS: Four years, Your Honor. .

18 THE COURT: Four?

19 MR. THOMAS: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. THOMAS: Do you need any further response to that
22 or is that sufficient, Your Honor?

23 THE COURT: Well, I mean, you don't want to ask me
24 what's sufficient.

25 MR. THOMAS: Your Honor, you brought up the civil

1 rights claims --

2 THE COURT: Why wouldn't the statute of limitations
3 bar your claim?

4 MR. THOMAS: Because the statute hadn't pass on that
5 claim as well as the subsequent claims after that, Your Honor.

6 THE COURT: Uh-huh. Notwithstanding the fact that
7 you filed this case in October of 2020?

8 MR. THOMAS: For a 2018 document, yes, Your Honor.

9 THE COURT: All right, so let's talk about now your
10 failure to allege that in the Taggart, Morgan Stanley case,
11 again, the allegations in paragraph 70 and 135 of your Amended
12 Complaint regarding ownership of the mortgage and the note on
13 Mr. Taggart's property, okay.

14 And your response, I understand that the 2016 case,
15 again, involving this property was dismissed without prejudice,
16 but that doesn't change the fact that in that case, Judge Smith
17 let your quiet title claims against Deutsche Bank and U.S. Bank
18 proceed to discovery solely because of this question about
19 whether U.S. Bank had an interest, right, in the mortgage?

20 There was a hearing in October of 2016. Judge Smith
21 pointed out the discovery had revealed that U.S. Bank did not
22 have any interest in the property. And at the end of the
23 hearing, you agreed that the court should dismiss those quiet
24 title claims, all right?

25 Now you include those same allegations in your

1 Amended Complaint without any reference to their involvement in
2 this prior proceeding or any new evidence to support the
3 allegation. How can you do that?

4 MR. THOMAS: Once again, Your Honor, as we stated
5 previously, the assignments of mortgage has still not been
6 withdrawn from the record that shows their interest, or not
7 their interest, that shows why they were included because they
8 were on the chain of assignments.

9 Further, the depositions showed additional facts in
10 regards to those parties after those that was entered, which is
11 why we continued to pursue the action against them as well.

12 THE COURT: Okay, and Judge Smith also told you in
13 that case that your quiet title claims and the state
14 foreclosure could not proceed separately because "you can't
15 have one court say the mortgage is valid and have another court
16 say the mortgage is not valid". Why doesn't that same
17 principle apply here in this case?

18 MR. THOMAS: Because we're not attacking the mortgage
19 specifically. We're attacking the chain of assignments, Your
20 Honor. We're saying they should be void.

21 THE COURT: Do you see any inherent contradiction
22 within the sentences you just said?

23 MR. THOMAS: Only if I thought the assignments of
24 mortgage and the mortgage itself are the same document.
25 They're not.

1 The chain of assignments can be void. There's
2 certainly a thing in Pennsylvania that's used as corrective
3 assignment.

4 And if a corrective assignment was made showing a
5 true change of assignments, then the mortgage can certainly be
6 enforced.

7 In this case, they're relying on documents that
8 outside of the mortgage that are void and hence why their quiet
9 title action's being pursued to try and void those assignments.

10 THE COURT: Okay, so let's go to issue 6 from my
11 order. And that was your motion for injunctive relief and
12 hearing on the quiet title claims, which was ECF 39 and why
13 that didn't violate Rule 11, subparts (b)(1) and (2),
14 particularly when we consider another court's disposition of
15 similar motions.

16 But let's start with this. You are telling me you
17 sought this relief because if you were victorious, if you won
18 that motion, it would effectively halt the state court action,
19 okay.

20 That is an outright admission that this case is a
21 collateral attack on the state court foreclosure. There is no
22 way to interpret that position any other way when you're
23 telling me that you need to win your motion for injunctive
24 relief to halt the state court action. What possibly could I
25 be missing there?

1 MR. THOMAS: You wanted the chain of assignments
2 cleared up. If this Court ruled, as what we requested to be
3 done, that any chain of assignments are void, then in order to
4 proceed with the state court action, the proper chain of
5 assignments would have to be submitted.

6 Like I just said, there could be a corrective chain
7 of assignments showing that void assignments were --

8 THE COURT: But can't you say what you just said?

9 MR. THOMAS: No, Your Honor.

10 THE COURT: You cannot see that you literally just
11 told me that if I ruled in your favor, you'd halt the
12 foreclosure in the state court case? That's what you just said
13 to me.

14 MR. THOMAS: Your Honor, what I --

15 THE COURT: And then, you say to me that this case is
16 not a collateral attack on the state court's judgment.

17 MR. THOMAS: Well --

18 THE COURT: Do you -- I mean.

19 MR. THOMAS: Number one, that was filed prior to a
20 judgment being entered. Number two, in this --

21 THE COURT: But your position remains the same. You
22 just articulated the relief you sought and the reason for it.
23 And it's to halt the foreclosure proceedings emanating from the
24 state court case. That's what you just said.

25 MR. THOMAS: And prior to that response, I also said

1 if the chain of assignments was corrected, they could pursue
2 the mortgage unhindered --

3 THE COURT: But --

4 MR. THOMAS: -- because there would no longer be a
5 chain that was -- that had void documents included.

6 THE COURT: Do you not see that you just literally
7 admitted to me that the purpose of your motion, and it's
8 nothing new, you say it in your papers too, the purpose of your
9 motion was to halt the state court action? You just said that
10 to me?

11 MR. THOMAS: I did not say that, Your Honor, not
12 those specific words. What I specifically said was that if the
13 chain of assignments was clarified, then it would be proceed.
14 That's what I said.

15 That it's not to try and strike down a nonexistent
16 judgment that hadn't been filed when that motion was filed and
17 this relief was not permitted in any way.

18 It was specifically to try and have this case heard.
19 So if there's any corrective assignments or any assignments
20 that were being void as is exactly what we were attempting to
21 show in this case, then they could be incorporated into that
22 matter, Your Honor.

23 THE COURT: To have this case heard, so that if there
24 were any corrective assignments, translated so that if I ruled
25 in a way favorable to you on any of the issues, you could go

1 back and use that ruling in the state court case. That's what
2 you just said to me.

3 MR. THOMAS: To go back and clear the chain of title,
4 Your Honor.

5 THE COURT: Exactly. Thank you. That's perfect.
6 You reiterate in your response to my order that your quiet
7 title claim is based on your belief that Deutsche Bank does not
8 have a valid interest, the assignments were invalid.

9 Although you couldn't raise a quiet title claim in
10 the foreclosure action, you could raise all of those arguments
11 about the invalidity of Deutsche Bank's title and the
12 assignments.

13 And, in fact, you did from our discussions at oral
14 argument. By granting summary judgment in the foreclosure
15 case, the state court necessarily decided that Deutsche Bank
16 had a valid interest and that the chain of assignments was
17 valid. You understand that, right?

18 MR. THOMAS: I understand that's what his ruling came
19 to and that's why it's on appeal, yes.

20 THE COURT: Okay, that's -- and that's fine. You can
21 appeal it through the chain -- the proper chain in the state
22 court system.

23 What you can't do is appeal it by filing this
24 lawsuit, but --

25 MR. THOMAS: This lawsuit was filed two years before

1 that.

2 THE COURT: -- if you want to challenge the validity
3 of Deutsche Bank's interest, or the validity of the assignments
4 of the mortgage, you do that by appealing the state court
5 foreclosure case, which you are doing.

6 Can't you see that you are making essentially the
7 same arguments here, that so much, if not all of this case, is
8 an appeal, for lack of a better word, to federal court of the
9 decision against you in the state court? Can't you see that?

10 MR. THOMAS: Absolutely not, Your Honor. This was
11 filed two years almost before that state court action. To
12 define this as an appeal completely ignores that timeline. So
13 absolutely not. This is not an appeal.

14 THE COURT: What about now? What about now?

15 MR. THOMAS: We still have the separate claims that
16 are completely outside of the foreclosure. We were told by a
17 prior judge can not be brought in foreclosure --

18 THE COURT: None of those claims are complete --

19 MR. THOMAS: -- and were withdrawn since they were
20 not part of it.

21 THE COURT: None of those claims are completely
22 outside the foreclosure because the elements of all of them
23 were a necessary part of the state court's judge's decision.
24 None of them are out -- completely outside the foreclosure
25 action. None of them.

1 MR. THOMAS: Breach of claim is not part of it.
2 Quiet title is a separate action. The foreclosure steps that
3 are required to get to foreclosure are frankly very specific
4 especially in Pennsylvania.

5 Quiet title is a very separate action. They don't
6 overlap in regards to what's required for one or the other.

7 THE COURT: Okay. So your motion, if I needed
8 further evidence as to its motive, was clearly an attempt at a
9 sur-reply to the motions to dismiss.

10 You spend the first 12 pages of your Motion for
11 Injunctive Relief re-hashing your arguments in response to the
12 motions to dismiss. That's not proper.

13 And let's look at your arguments regarding likelihood
14 of success on the merits and irreparable harm. The state
15 court's foreclosure judgment undermines your position about the
16 validity of Deutsche Bank's receipt and possession of the loan.
17 Can't you see that? Don't you see that?

18 MR. THOMAS: I understand that's their position, but
19 again, because they ruled summary judgment, but didn't submit
20 an opinion, I don't know exactly why they ruled in the way that
21 they did.

22 THE COURT: Well, what does it matter why they ruled
23 why they -- that's --

24 MR. THOMAS: Because they made --

25 THE COURT: -- that is respectfully completely

1 irrelevant.

2 MR. THOMAS: Honestly, it's not, Your Honor.

3 THE COURT: They couldn't have entered judgment
4 against you and in favor of Deutsche Bank without deciding that
5 all of the elements necessary to succeed in the foreclosure
6 action had been proven.

7 MR. THOMAS: Respectfully, I disagree to some extent.

8 THE COURT: Okay.

9 MR. THOMAS: There's a case that was in New Jersey
10 that actually came in the appellate division, that I believe
11 was actually again, not obviously -- need to be relied on, but
12 can be instructive that actually said that the note was
13 mishandled, yet a judgment's permitted any way. There's --

14 THE COURT: So to prevail on a foreclosure claim in
15 Pennsylvania, a plaintiff has to show, among other things, that
16 the parties to and date of the mortgage and of any assignments.
17 That's an element of a foreclosure case in Pennsylvania.

18 And a foreclosure judgment necessarily includes a
19 finding that the mortgage was valid and that the mortgage
20 holder, who is the plaintiff in a foreclosure action, has
21 standing to foreclose. That's just black letter law.

22 Summary judgment for Deutsche Bank required the state
23 court to recognize the validity of its interest in the mortgage
24 and the validity of the chain of assignments between it and
25 Decision 1.

1 And the state court did explain that. If you look at
2 its opinion in the foreclosure action, it found that MERS
3 assigned the Decision 1 Mortgage to Deutsche Bank in 2010 and
4 that the evidence showed that Deutsche Bank was the proper
5 mortgage holder. The state court conclusively determined all
6 of that.

7 You can appeal it and you are appealing it --

8 MR. THOMAS: You --

9 THE COURT: -- but you're not making any different
10 arguments here. And you're not asserting any separate claims.
11 And the necessary findings in the state court govern most, if
12 not all, of what you're doing here.

13 MR. THOMAS: Whether the assignments of mortgage are
14 void or not cannot be brought in the foreclosure action.
15 That's what we were stating. That's why they're brought here.
16 And that's why I mean --

17 THE COURT: They had to have been found to be valid.
18 The state court judge could not have entered judgment in favor
19 of Deutsche Bank without so finding. Don't you understand
20 that? How can't you understand that?

21 MR. THOMAS: I absolutely --

22 THE COURT: What can I do to get you to understand
23 that?

24 MR. THOMAS: I absolutely understand that's how the
25 judge ruled. I understand that. Again, the opinion was not

1 specific as you're --

2 THE COURT: So whether you think the judge is right
3 or wrong isn't the issue. That's how the judge ruled. You
4 just told me that. That's how the judge ruled. So the judge
5 made those findings.

6 MR. THOMAS: And --

7 THE COURT: And as we sit here today, that's a final
8 judgment. Is there anything about that you do not understand?

9 MR. THOMAS: No.

10 THE COURT: Thank you. Let's talk about your
11 repeated missing of deadlines in the Court and why I should not
12 consider that conduct vexatious or in bad faith justifying
13 sanctions.

14 You say that you fixed the issue that had caused the
15 calendaring error for federal court motion deadlines. What was
16 that issue?

17 MR. THOMAS: I had a calendaring deadline set
18 automatically to 21 days because of the summary judgment
19 deadline that obviously was wrong. It should have been 14
20 days. Hence why that was corrected, so now any time I set a
21 deadline, it'll be 14 days rather than 21.

22 THE COURT: Well, there were a lot of deadlines in
23 this case that you've missed. It wasn't just a response to a
24 summary judgment motion.

25 MR. THOMAS: Well --

1 THE COURT: Virtually all deadlines you either seek
2 extensions for. And when I deny it, you miss them and you file
3 whatever you want to file when you want to file it. So it
4 wasn't 21 days versus 14 days.

5 Look, I've read a lot of the jurisprudence involving
6 your conduct. Your missing deadlines and ignoring scheduling
7 orders is *de rigueur* for you. It's how you practice law. And
8 I can cite a number of opinions in this Court, in the District
9 of New Jersey. It's what you do.

10 How can you just blame it on a calendaring error that
11 was so easy to fix? What's the excuse for this entire pattern
12 of conduct, which was present in this case?

13 MR. THOMAS: Sure, so in this case, that was the
14 reason. In other cases, it's frankly because whenever, again,
15 I do my best and you're certainly able to cite the cases where
16 I missed the deadlines.

17 There are numerous cases where I met them. That
18 should be the case. I'm not trying to say that's a good thing.
19 That's what should happen.

20 What I'm saying is as a solo practitioner, it's
21 oftentimes difficult to make sure to hit them and that's why I
22 often ask for extensions.

23 Because I will ask to try to make sure that I hit the
24 proper timing for proper motions. It's not optimal.
25 Obviously, it's not optimal.

1 I tried my best to hit every deadline I can. And
2 when I can't and when I know that I can't, I will submit a
3 motion to extend or a motion to adjourn to try and hit the
4 deadline properly.

5 I fully understand that there is a history of me not
6 doing so properly in cases. And those are the ones that get
7 highlighted, not the numerous cases where we were successful.

8 The biggest case where we -- I was successful and
9 hit --

10 THE COURT: Well, it's not a batting average. It's
11 not like if you get 3 out of 10, you're in the Hall of Fame
12 here.

13 MR. THOMAS: I understand.

14 THE COURT: And I have to say I don't know that I
15 have read as many -- I don't know that I have seen as many
16 judges elaborate on your consistent inability to meet deadlines
17 of any lawyer I've ever seen.

18 MR. THOMAS: I understand.

19 THE COURT: I mean, there are numerous -- let's just
20 stay in the federal courts. I don't know what the state courts
21 have done with you, but numerous opinions from federal judges
22 on this side of the river and the other side of the river
23 just -- it's chronic.

24 And I have a number of solo practitioners, who
25 practice before me. I've never had anyone engage in the

1 conduct you have.

2 I don't recall -- there might have been one. The
3 odds there was. I don't recall in any case you've had before
4 me, you meeting a deadline without either seeking a motion to
5 extend your deadline, which sometimes I've granted and
6 sometimes I haven't.

7 I've never -- I just don't recall you ever meeting a
8 deadline and -- an original deadline. And I have a lot of sole
9 practitioners that I don't have that problem with.

10 And for you to stand here under oath and tell me that
11 it's just a calendaring error and by changing your calendar
12 reminder feature from 21 to 14, that I should say that, okay,
13 no harm, no foul, it doesn't work that way.

14 MR. THOMAS: That's not what I'm saying, Your Honor.
15 With all -- respectfully, it is a problem. I'm not denying
16 that. I mean, there's obviously there's evidence where it's a
17 clearly a problem. It's something again --

18 THE COURT: If it's clearly a --

19 MR. THOMAS: If --

20 THE COURT: -- and I appreciate your candor, but if
21 it's clearly a problem, and it's this widespread in my cases
22 and other cases, how can anyone in my position not look at that
23 and say that it was either vexatious or in bad faith?

24 It's not just negligence anymore. We're long past
25 oversight.

1 MR. THOMAS: So --

2 THE COURT: We're long past, you know, you were --
3 you confused the A case with the B case. We're long past that.
4 How am I supposed to look at what you've done here and say that
5 it wasn't in bad faith?

6 MR. THOMAS: I don't deem to try and tell Your Honor
7 how to make that decision. I can tell you personally, it is a
8 problem, primarily in federal cases, not as much in state to
9 whatever reason.

10 It's not specifically you. It's not bad faith
11 towards opposing counsel. It's not with the intent to
12 prejudice them or Your Honor in any way.

13 It's not done to try and hinder a case or to hurt
14 anyone, frankly. It's done frankly because I have, as has been
15 shown, oftentimes poor scheduling skills specifically with the
16 federal court. It's a problem.

17 THE COURT: Do you have any support help in your
18 office?

19 MR. THOMAS: One individual, who will help
20 with -- had been helping previously with modifications and for
21 some bankruptcy preparation. It's --

22 THE COURT: But you don't have anyone who helps you
23 with your schedule, helps --

24 MR. THOMAS: I tried to automate that, but no, Your
25 Honor. Frankly, it would eliminate in my opinion numerous, if

1 not all of these issues to have someone do it. I just don't.

2 THE COURT: Well, let me ask you this. You've just
3 told me that having someone work for you would eliminate all
4 these issues, but you just don't do it.

5 What am I speaking individually on behalf of my
6 colleagues on the bench supposed to take from that, that you
7 have so little respect for our schedules?

8 Schedules are orders, right? Schedules are court
9 orders. You violate a schedule, it's the -- you're violating a
10 court order.

11 If you have so little respect for the Court's orders,
12 and hence for the Courts themselves, how am I or anyone else
13 supposed to look at this any other way than it's just bad faith
14 on your part?

15 MR. THOMAS: It's absolutely not an issue of respect.
16 I have the highest respect for Your Honor. I have the highest
17 respect for every judge I ever go in front of. Whether I agree
18 or disagree about a rule, I can strenuously disagree, I still
19 respect them incredibly so.

20 It's a reflection on me personally that I have the
21 issue. It's not a reflection on the Courts. It's not a
22 reflection on your -- whether I respect you or not, because I
23 do. I respect every judge I've ever been in front of. That's
24 not the issue.

25 The issue again is an internal issue for whatever

1 reason, it just seems to be an issue where I don't handle the
2 deadlines properly.

3 I gave you a specific reason in one case. It's not
4 for all of them obviously. So, that's why, Your Honor, I'm
5 asking -- that is why it's not a bad faith, it's not vexatious,
6 it's not to try and prejudice the other parties or Your Honor.

7 It's an issue on my behalf that I work every time
8 that I see an issue to try and resolve it. It has been a
9 problem historically, I understand that.

10 And I'm working to try and resolve it and fix it.
11 But again, it's not a reflection on my opinion in any way on
12 Your Honor or any other judge or court.

13 THE COURT: Okay. Let's move to point A to my order,
14 the --

15 MR. THOMAS: Okay.

16 THE COURT: -- your -- and I think this goes to
17 respect for the courts for the judicial process.

18 And we term this in the Order to Show Cause your lack
19 of discretion and diligence in crafting, reviewing, and
20 submitting your Amended Complaint, which repeatedly mislabels
21 the parties, recycles entire paragraphs from state court
22 proceedings, that's the cut and paste part, is riddled with
23 spelling and grammatical errors, and how that doesn't reflect a
24 disrespect for the Court and the Rules of Civil Procedure and
25 your opponents such that it doesn't constitute bad faith or

1 vexatious conduct?

2 Now a complaint can be a bit lengthy as you described
3 it, but this was 77 pages. It was 400 paragraphs. We went
4 through it to a degree at oral argument. It was just a mess,
5 just a mess from top to bottom. Just an absolute mess.

6 And the issue with copying and pasting paragraphs
7 from other pleadings, which finally, despite denying it,
8 denying to me that you did it at oral argument, you acknowledge
9 to a degree in your response that you did it. It's not that
10 doing that violates the rules. It's not that you have to
11 rewrite everything from scratch.

12 The issue is that you didn't even care enough to try
13 to make what you copied and pasted from your state court
14 pleadings fit into your Amended Complaint.

15 Two issues, one goes back to obviously taking as much
16 as you did from your state court pleadings, lifting it,
17 dropping it in your federal court proceedings is, again, proof
18 positive that you're just trying to re-litigate the state court
19 action here.

20 And I know you say you know it was important for me
21 to have that background. No, it wasn't, but it was just proof
22 that you were re-litigating the state court action here.

23 But this is what Judge Hardiman sanctioned you for in
24 the Convoy (phonetic) case. Judge Hardiman is not someone who
25 looks to sanction counsel.

1 I suspect you really had to bother him a great deal
2 to get him to do that, but in this case, you refer to your own
3 client as the Defendant multiple times. You refer to the
4 Defendants as Plaintiffs multiple times.

5 You discuss in your complaint in this case that Bucks
6 County is the appropriate venue for the case. It's paragraph
7 197.

8 And you discuss that it is appropriate and why it's
9 appropriate to bring an FDCPA claim in state court. And that's
10 paragraph 208, okay?

11 You didn't even try to make it look good. And how
12 can I sit here and conclude that that was anything other than
13 bad faith or vexatious conduct? That wasn't an oversight. It
14 wasn't a mistake.

15 And that's why I was trying to get to the bottom of
16 who did this. I was trying to get you off the hook a little
17 bit and maybe have Mr. Taggart jump in and say he did it, which
18 would have been a separate issue for you, but how can I look at
19 that?

20 I mean, lawyers make mistakes. Judges do, too,
21 right? And okay, I understand a typo. I understand an error
22 here or there.

23 This was not that. Give me anything to hang on to
24 convince me that this isn't sanctionable conduct?

25 MR. THOMAS: I will absolutely do my best to give you

1 that. In this case, Your Honor, you're absolutely correct,
2 some of the facts -- many of the facts were initially taken
3 from prior pleadings or prior discussions after reviewing them,
4 incorporated in for the historical purposes.

5 Your Honor just said that it wasn't important. We
6 felt that it was needed to try and give historical basis for
7 many of the claims.

8 In regards to the different parties, what I will
9 often do when I do that, is I'll go through and then update the
10 paragraphs either with control, find, and replace to update the
11 party names and then clarify any other further lines that need
12 to be clarified in regards to those specific changes.

13 In this case, and I understand what Your Honor's
14 saying in regards to the -- to specific quoted lines, since
15 this case had originally stemmed from the state court, that's
16 why those were there.

17 It was an oversight and mistake on my behalf to not
18 change those in this Amended Complaint when it was removed,
19 post-removal to take that line out.

20 As we stated -- as I stated previously, Your Honor,
21 trying to do this on my own, trying to actually go through was
22 we all know is a lengthy complaint. I did miss some things I
23 should have changed.

24 And, frankly, a lot of the party changes were because
25 I had missed those on an updated version when I switched

1 everything for the Amended Complaint versus the state or versus
2 the first one.

3 So it is an error, Your Honor. I agree. It's --

4 THE COURT: An error?

5 MR. THOMAS: Well, no, it is --

6 THE COURT: Singular?

7 MR. THOMAS: There are several errors, I should say.

8 THE COURT: Countless, countless.

9 MR. THOMAS: That have gone into that complaint. I
10 would respectfully say that I have had this issue actually come
11 up in a New Jersey case where the court -- actually we went
12 through every single claim essentially and the court actually
13 said to go back and actually remove any claims that are
14 spurious or not relevant.

15 THE COURT: Why would that be the court's job?

16 MR. THOMAS: No, no, it's not the court's job. The
17 court wanted to go through the claims to try and dismiss them.
18 And we did, we dismissed maybe 18 out of 20. We dismissed a
19 lot of claims that way. So what's the court's goal was, to do
20 that.

21 I would suggest in this case, Your Honor, that I
22 could go through and then clear up and delete much of the
23 extraneous items in the current complaint so that way --

24 THE COURT: We're long past that. We're long past
25 that.

1 MR. THOMAS: I --

2 THE COURT: The issue isn't whether you can correct
3 it in this case. The issue is why you would do it in this case
4 and are you capable of correcting it going forward?

5 And you know, and again, in reading some other
6 opinions, I don't feel special. You didn't just do it to me.
7 You do it all the time in all your cases.

8 And, you know, I can't say in all your cases. In the
9 cases that I read about, but you know, you say in your response
10 while the Court was correct that some paragraphs were certainly
11 copied from other pleadings, okay, you acknowledge that.

12 MR. THOMAS: Yes, and I still --

13 THE COURT: At oral argument on the motions to
14 dismiss, I accused you of lifting entire passages from your
15 state court papers, okay, and you stood there and you
16 repeatedly denied doing that to my face. That was dishonest.

17 MR. THOMAS: I understand.

18 THE COURT: You lied to me repeatedly. You lied to
19 me. We had that whole discussion. Didn't -- looks like you've
20 copied and pasted a lot of this. No. Why did you lie to me?

21 MR. THOMAS: The answer was the final version should
22 not have had such drastic errors. And because a lot of it
23 had -- the claims specifically had actually been essential re-
24 done. And the facts, while some of them were actually taken,
25 you're correct, if it what I said --

1 THE COURT: Why did you lie to me?

2 MR. THOMAS: If what I said was --

3 THE COURT: Why did you lie to me?

4 MR. THOMAS: It was not my intent to lie, and if I
5 did so, I apologize, Your Honor.

6 THE COURT: You mean let's fall back on the old
7 mistakes were made, right?

8 MR. THOMAS: That's not what I'm saying, Your Honor.
9 I'm saying I should not have lied. If what I said was
10 incorrect, I apologize. It was not a mistake, it's --

11 THE COURT: Hold on. If what you said was incorrect,
12 you apologize. That's not an apology. You stood there at that
13 podium and you lied to me, okay?

14 Now I knew you were lying when you were lying because
15 I have eyes and I could compare the two sets of papers. The
16 question is why did you lie to me?

17 MR. THOMAS: And the answer, I can't give a good
18 answer frankly. The answer is that at the time, I didn't think
19 that there had been such --

20 THE COURT: How could you not?

21 MR. THOMAS: Well, hold on.

22 THE COURT: You did them both.

23 MR. THOMAS: There had been such drastic --

24 THE COURT: You did them both.

25 MR. THOMAS: Even I went through and tried to amend

1 everything that I could, I didn't think everything was still
2 the same where it was as you said essentially the same. That
3 was my mistake and I was wrong and I apologize for that.

4 THE COURT: Apologize for lying to me.

5 MR. THOMAS: I apologize for lying to Your Honor.

6 THE COURT: Thank you. And Judge Wolson concluded
7 that you lied to him. And you were under oath before him just
8 as you are here me today.

9 MR. THOMAS: Understand. I believe you're talking
10 about the Pope (phonetic) matter. At no point was there a lie
11 or anything along those lines given in that case. I understand
12 what he said and I understand what his ruling was, but again,
13 that was not a lie.

14 There was a few items where he asked about issues
15 with that case. It was not a lie at all in that case.

16 THE COURT: Joshua Thomas has appeared before the
17 court twice. Throughout those cases, he has disregarded the
18 rules and deadlines that ensure cases move in an orderly way.

19 Even worse, he has ignored this court's order. At
20 the hearing to address the first order, Thomas was not
21 contrite.

22 To the contrary, he lied to the Court about the
23 reason for his actions on the record and under oath. That's
24 Judge Wolson in the case of Jacovetti v. Shelton. Had nothing
25 to do with the Pope case.

1 MR. THOMAS: I apologize, Your Honor.

2 THE COURT: Well, respectfully, that that exchange
3 and your not knowing what case I was referring to is really
4 disturbing to me because you have a federal judge saying that a
5 member of the bar of this Court lied to him under oath and that
6 doesn't even stand out to you.

7 MR. THOMAS: It does.

8 THE COURT: Just as when I mentioned Judge Hardiman
9 at oral argument and you didn't know who that was. The
10 question becomes is this so routine? Are judges all over the
11 place describing your conduct that critically that you can't
12 keep it straight?

13 Or do you just -- does that just not make any
14 impression on you? You are a lawyer. There is a published
15 opinion with your name all over it and a federal judge saying
16 you lied on the record and under oath.

17 MR. THOMAS: There were two --

18 THE COURT: Does that keep you up at night at all?

19 MR. THOMAS: Yeah, it does, actually. There were two
20 instances where I've been put under oath ever. There was that
21 case where frankly I just didn't remember he actually said that
22 I lied. The Pope one, I did, because --

23 THE COURT: You didn't remember he said you lied and
24 that's my point, sir. That's my point. A federal judge
25 published an opinion calling you a liar. And not just a liar,

1 a liar under oath. And you don't remember that?

2 MR. THOMAS: I don't remember that exchange very
3 well. I don't remember him using those exact words. I
4 remember the exchange extremely well because --

5 THE COURT: Do you remember -- did you read his
6 opinion?

7 MR. THOMAS: Multiple times, actually.

8 THE COURT: Multiple times, okay.

9 In your response with respect to point 8, you say to
10 me, with in defending or explaining all of the mistakes, all of
11 the grammatical errors, all of the spelling mistakes, all of
12 the cutting and pasting, all of the stuff we've been talking
13 about, you say that "you will make sure when possible to
14 attempt to proofread the documents in a much better fashion".
15 When possible, you will attempt in a better fashion.

16 MR. THOMAS: Let me clarify that because I understand
17 now as you say it how that could sound questionable. I will
18 always proofread them.

19 The issue is I oftentimes in doing it immediately
20 after writing it. What I'm saying is I will attempt to make
21 sure the proofreading is done distant from the actual drafting,
22 so that way, I catch more errors to make sure they don't happen
23 again.

24 THE COURT: Can I take any comfort in that? I mean,
25 can I or any judge take any comfort in that, that you will,

1 when possible --

2 MR. THOMAS: When --

3 THE COURT: -- paren synonym, when convenient,
4 attempt I'll give it a shot. There may be times when it's not
5 possible. There may be times when I wasn't able to attempt.

6 And there -- and then, you're just going to get
7 recycled crap full of mistakes, but you know on the times when
8 I have time to do it, I'll try to do a better job.

9 MR. THOMAS: No, the times when I don't have time to
10 do it is when I would ask for an extension or which is to make
11 sure to actually start them earlier, so I always have time to
12 do it with the distance so that way, I catch more mistakes.
13 That's what I'm saying now.

14 THE COURT: I guarantee you that all of the mistakes
15 we're talking about were made after you got extensions or after
16 you filed something late. The timelessness is not relevant to
17 it, okay?

18 And again, I want to turn now to lying again. And
19 this is where we're going to end this, because this is really
20 bad. This is really bad.

21 You'll recall how our oral began with your opponent,
22 Mr. Barenbaum calling my attention to the fact that you had
23 been suspended in Pennsylvania for failure to comply with your
24 CLE requirements, okay?

25 And I want to go to the transcript that's that part

1 of the transcript. Oral argument was April 22. And in
2 response to Mr. Barenbaum's assertions and what he was reading,
3 based on what he had received from Disciplinary Counsel and the
4 Disciplinary Board that you were suspended effective April 16,
5 which was six days prior to our hearing.

6 You told me on April 22nd that you had cured whatever
7 defect had led to your administrative suspension. You told me
8 "as of today, the CLEs were or I should say as of the beginning
9 of the week the CLEs were complete and I was told that that
10 would mean that I can continuing to practice doing everything I
11 would need to do." Do you remember saying that to me?

12 MR. THOMAS: Yes.

13 THE COURT: All right. Well, obviously, your status
14 isn't objectively verifiable -- is objectively verifiable. And
15 when we left Court that day, we sought to verify it.

16 And we were told by counsel for the Disciplinary
17 Board that you were administratively suspended on March 17,
18 2021 for CLE noncompliance, which order became effective April
19 16, six days before our hearing. That order required you to
20 notify your clients, opposing counsel, and courts before whom
21 you were practicing.

22 You then came to Court on April 22, a week roughly
23 after your suspension became effective. You took umbrage at
24 the fact that Mr. Barenbaum brought it up, but you were
25 actually obligated and required to tell Mr. Barenbaum before he

1 even got here and your other opponents.

2 You were obligated to tell Mr. Taggart, who had no
3 idea about this. And he so told me that day. You were
4 obligated to tell me, okay?

5 Disciplinary Counsel told us that day that Mr. Thomas
6 has not cured his problem. He still needs to complete his past
7 due requirements, as well as this year's 2020 and 2021 before
8 you would be in compliance.

9 Okay, you told me it's a CLE issue, Your Honor. It
10 shouldn't have gone into effect. The CLEs were submitted. I
11 don't know why they weren't applied.

12 You're under oath here right now. And I'm going to
13 ask you once. When you made that statement to me, you were
14 lying to me, weren't you?

15 MR. THOMAS: When I made the statement, I was
16 mistaken. I was not intentionally lying. For the previous
17 year, the last CLEs had been taken at the time frame I
18 expected. For this year, they had been taken yet.

19 After speaking with the CLE --

20 THE COURT: I've got more emails to read from. Be
21 careful from the Disciplinary Counsel. Be careful.

22 MR. THOMAS: I understand, I'm saying they were cured
23 by the time this response was submitted, they were cured and I
24 was --

25 THE COURT: Hold on. Not by the time this response

1 was submitted, which by the way, is also false, okay? I'm
2 talking about as of April 22, the CLEs were submitted. You
3 assured me that you had remedied any administrative issues with
4 respect to your law license on April 22. When you told me
5 that, that was false and you knew it to be so, wasn't it?

6 MR. THOMAS: I did not know it to be so. It was
7 false at the time because the CLEs had not actually all been
8 submitted for that year.

9 THE COURT: Yes, but you told me that they had been.

10 MR. THOMAS: I guess I thought they had --

11 THE COURT: You told me the CLEs were submitted. And
12 when I asked -- and see, here's the beauty of this. I knew you
13 were lying when we were having this exchange, okay?

14 Because in addition to your lips moving, which is
15 your tell, all right, nothing that you said made any sense to
16 me because then I said do you have any proof showing that you
17 submitted the credits?

18 I don't have that with me. I could certainly find
19 the certificates, Your Honor, but I don't have those with me at
20 that time.

21 And I said, well, why don't you forward them to me
22 and to your opponents? I'll certainly try to find them and
23 submit them, Your Honor.

24 Prompting me to ask you how would you not be able to
25 find them? What do you mean try and find them?

1 I would need to go onto the website and actually get
2 them, so that way, I can submit them.

3 Well, why don't you just give us whatever you gave to
4 the Supreme Court of Pennsylvania? Just give them to us. Why
5 do you have to go find them? You are telling me that you
6 submitted proof to the Supreme Court of Pennsylvania that you
7 complied with the CLE requirements?

8 Answer: Yes.

9 You had not done any such thing by April 22nd, had
10 you?

11 MR. THOMAS: The CLEs had been completed. I hadn't
12 sent them to the Supreme Court in any way because I wasn't
13 aware at that time that it was required to submit it as well
14 after the order was issued.

15 THE COURT: Okay, and you -- what you just said to me
16 under oath directly contradicts what you said to me on April
17 22. Do you understand that?

18 MR. THOMAS: Yes.

19 THE COURT: Okay, and in fact in your response, you
20 represent I made it clear that while I knew it had been
21 recently resolved, that is a lie, I was unaware opposing
22 counsel was going to bring the matter up. I'm quite surprised
23 by it. I made sure to try and be as candid with the Court as
24 possible. No, you didn't.

25 MR. THOMAS: Your Honor, again, I understand --

1 THE COURT: Because we followed up again after you
2 filed this or after the hearing and before you filed this and
3 both. And as of April 23rd, we're told you need to complete
4 your compliance requirements for both 2020 and 2021, okay.

5 And on May 11, in advance of this hearing, we
6 followed up again, and we were told on April 27, Mr. Thomas
7 satisfied his requirements with the P.A. CLE Board.

8 In turn, the P.A. CLE Board certified his compliance
9 to the Attorney Registrar. Immediately, thereafter, the
10 Registrar emailed Mr. Thomas with the requirements for
11 reinstatement and provided the forms necessary to him.

12 If he did not know about the \$300 fee because you
13 have to get a \$100 penalty *seriatim* you don't take care of it,
14 by April 16th, he certainly knew about it by May 3rd.

15 And we have evidence of course from March of 2021,
16 the certified return receipt requested letter that you
17 received, evidence showing that you knew exactly what the
18 penalties were, what you had to do to cure them, and when the
19 suspension took effect.

20 So as you sat here and stood there in front of me on
21 April 22nd and you assured me that you had remedied your
22 administrative suspension, you lied to me. And you only took
23 steps to do so after the hearing. Is that or is that not
24 correct?

25 MR. THOMAS: Partially correct. Everything you said

1 is correct except at that time, I was not under -- I was
2 unaware that the CLEs that had been submitted did not actually
3 make it compliant. Otherwise, you're correct.

4 THE COURT: You hadn't submitted anything. That's
5 what they told us.

6 MR. THOMAS: I understand.

7 THE COURT: You hadn't submitted anything. You can't
8 even lie about lying to me.

9 All right, is there anything anyone on the Defense
10 side would like to add to any of this? I thank you for coming,
11 by the way. It was certainly optional. I assume you wouldn't
12 want to miss it. Anybody?

13 MR. BARENBAUM: Evan Barenbaum. No, Your Honor.

14 MS. BETTINO: No, Your Honor, but just two clarify
15 that the FDCPA statute of limitations is one year.

16 THE COURT: Oh, yeah, thank you, thank you.

17 MR. MCKEE: Nothing more, Your Honor.

18 THE COURT: Peter?

19 Thank you, we're adjourned.

20 MR. THOMAS: And can -- may we be excused?

21 THE COURT: You may, thank you.

22 MR. THOMAS: Thank you, Your Honor. Are we off the
23 record?

24 THE COURT: Hold on, start again.

25 Jeff, you ready?

1 THE COURT RECORDER: Yeah.

2 THE COURT: Go.

3 MR. THOMAS: Your Honor, I would like to apologize to
4 you directly and personally for all the difficulty that I've
5 caused.

6 THE COURT: Thank you. Okay, we're adjourned.
7 Thanks, everybody.

8 MR. THOMAS: Thanks.

9 (Proceedings concluded at 11:30 a.m.)

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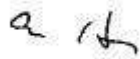
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CERTIFICATE

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

May 27, 2021

Chris Hwang
Transcriber

Date